

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES of AMERICA,)
)
 Plaintiff,)
)
vs.)
)
CHRISTOPHER MUSSO,)
)
 Defendant.)

NO. 05-CR-30101-DRH

ORDER

Now before the Court is Defendant Christopher Musso's motion for release pending appeal (Doc. 42). On January 5, 2011, the Court held a hearing on the Government's petition to revoke Defendant's supervised release (Doc. 21), where the Court determined that Defendant had violated the terms of his supervised release and sentenced Defendant to six months imprisonment followed by thirty months of supervised release. See Doc. 37. At the hearing, Defendant requested and the Government did not object to Defendant remaining out on a \$20,000 unsecured bond subject to the same conditions as his supervised release and to self-report to his designated BOP facility when notified by the U.S. Marshalls. The court granted this request, finding clear and convincing evidence that Defendant was not likely to flee or pose a danger to the safety of any other person or the community and because of the "exceptional reasons" created by Defendant's health issues, *i.e.*, diabetes requiring daily self-injections. See 18 U.S.C. §§ 3143(a), 3145(c). Accordingly, that same day the Court entered an order setting conditions of release (Doc. 35), and the following day entered judgment for revocation of supervised release (Doc. 37). On

January 18, 2011, Defendant filed his notice of appeal (Doc. 38), appealing the Court's order and judgment regarding the revocation of Defendant's supervised release and the resulting imposition of sentence. On January 24, 2011, Defendant filed this motion for release pending appeal (Doc. 42).

In the motion for release pending appeal, Defendant contends that he should be released pursuant to 18 U.S.C. § 3143(b). Under that section, a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or petition for a writ of certiorari shall be detained unless the Court finds two requirements have been met. First, the Court must find clear and convincing that the person is not likely to flee or pose a danger to the safety of another person or the community if released under 18 U.S.C. § 3142(b) or (c). Second, the Court must find that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process. 18 U.S.C. 3143(b). Here, the Court does not find that the second requirement has been met, and as a result, **DENIES** Defendant's motion for release pending appeal (Doc. 42).

IT IS SO ORDERED. Signed this 10th day of February, 2011.

  David R. Herndon
2011.02.10 13:37:25 -06'00'

**Chief Judge
United States District Court**